

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DONALD BURCHETT,

Plaintiff,

vs.

STEVE HEINTZ, DOUG BOE and
JOHN RODGERS,

Defendants.

NO. CV-07-413-JLQ

ORDER DISMISSING COMPLAINT

1915(g)

By Order filed January 30, 2008, the court advised Mr. Burchett of the deficiencies of his complaint and directed him to amend or voluntarily dismiss within sixty (60) days. Plaintiff, a prisoner at the Spokane County Jail, is proceeding *pro se* and *in forma pauperis*; Defendants have not been served. The court cautioned Plaintiff if he did not amend as directed, the complaint would be dismissed for failure to state a claim upon which relief could be granted under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1). Plaintiff did not comply and has filed nothing further in this action.

Plaintiff named only defense attorneys and their supervisors as Defendants in his complaint. He claimed they visited with him and considered issues regarding conflict of interest. A public defender does not act under color of state law when performing the traditional functions of a lawyer as counsel to a defendant in a criminal proceeding. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981), *holding limited on other grounds by West v. Atkins*, 487 U.S. 42 (1988). Plaintiff has alleged no facts from which the court could

1 infer named Defendants were acting under color of state law. Therefore, **IT IS**
2 **ORDERED** Mr. Burchett's complaint is **DISMISSED with prejudice** for failure to state
3 a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and
4 1915A(b)(1).

5 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who brings
6 three or more civil actions or appeals which are dismissed as frivolous or for failure to
7 state a claim will be precluded from bringing any other civil action or appeal *in forma*
8 *pauperis* "unless the prisoner is under imminent danger of serious physical injury." 28
9 U.S.C. § 1915(g). **Plaintiff is advised to read the new statutory provisions under 28**
10 **U.S.C. § 1915. This dismissal of Plaintiff's complaint may count as one of the three**
11 **dismissals allowed by 28 U.S.C. § 1915(g) and may adversely affect his ability to file**
12 **future claims.**

13 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
14 Order, enter judgment of dismissal with prejudice, forward copies to Plaintiff at his last
15 known address, and close the file. The District Court Executive is further directed to
16 forward a copy of this Order to the Office of the Attorney General of Washington,
17 Criminal Justice Division.

18 **DATED** this 18th day of April 2008.

19 s/ Justin L. Quackenbush
20 JUSTIN L. QUACKENBUSH
21 SENIOR UNITED STATES DISTRICT JUDGE
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